

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2387-02
Bill No.: SB 579
Subject: Health Care; Health Care Professionals; Health, Public; Physicians; Hospitals;
 Health Department; Certificate of Need
Type: Original
Date: March 30, 2007

Bill Summary: This proposal modifies provisions relating to certificate of need.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
General Revenue	(Less than \$234,566)	(Less than \$234,566)	(Less than \$234,566)
Total Estimated Net Effect on General Revenue Fund	(Less than \$234,566)	(Less than \$234,566)	(Less than \$234,566)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
 This fiscal note contains 8 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
Total Estimated Net Effect on FTE	0	0	0

Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the Secretary of State** and the **Department of Insurance, Financial Institutions & Professional Registration** each assume the proposal would have no fiscal impact on their respective agencies.

Officials from the **Office of the Attorney General (AGO)** assume that costs which may arise from this proposal are unknown. The AGO represents the Certificate of Need Board and, because of changes in definition, there may be an increase in litigation. AGO assumes costs are unknown, but less than \$100,000.

Oversight assumes, because the potential for litigation is speculative, that the AGO will not incur significant costs related to this proposal. If a fiscal impact were to result, the AGO may request additional funding through the appropriations process.

Officials from the **Department of Mental Health (DMH)** state Section 197.315.16 states that the provisions of this statute section shall not apply to facilities operated by the state (i.e., appropriation of funds to state facilities by the General Assembly shall be deemed in compliance with this section, and such facilities shall be deemed to have received an appropriate certificate of need without payment of any fee or charge). Therefore, the bill's fiscal impact to DMH is \$0, because it does not apply to DMH.

Officials from the **Department of Social Services** state this legislation modifies provisions relating to Certificate of Need, which is the responsibility of the Department of Health and Senior Services. These modifications will not impact Medicaid. The proposed legislation will not have a fiscal impact on the Division of Medical Services.

Officials from the **Missouri Health Facilities Review Committee (MHFRC)** state MHFRC reviewed the number of applications which received a Certificate Of Need (CON) decision in CY 2006. Of the 68 applications reviewed, only 17 would have been reviewable if this proposal had been in effect. In CY 2006, \$281,346 in application fees was submitted. Pursuant to this proposed legislation, that amount would have been reduced by \$134,566 or almost 48%.

ASSUMPTION (continued)

Officials from the **Department of Health and Senior Services (DHSS)** state the following:

Section 197.305(6) - The increase in the expenditure minimum from \$600,000 to \$1 million may have fiscal impact to Section for Long Term Care Regulation (SLCR) especially for operators wanting to establish smaller Residential Care Facilities (RCFs) and Assisted Living Facilities (ALFs). Some new facilities were developed under the \$600,000 minimum. It is hard to predict what impact the \$1 million minimum might have. There will be some increase since it will make it easier for an operator to open a new facility. The impact to SLCR would be an increase in licensed facilities which will then increase application and inspection activity as well as plan review activity.

Section 197.305 (10) (e) - The current requirement allowing a 10-bed or 10% increase has resulted in additional workload for SLCR in regard to processing of bed increase requests, issuing of revised licenses, reviewing and approving the requests to assure compliance with licensure requirements and reviewing of building additions or remodeling. To increase the allowed percentage to 25% will also increase the number of requests to increase beds. The removal of the time constraint before facilities can make bed increases, could mean a substantial increase in workload for SLCR staff.

Section 197.318.8 (4) and .10 - The new language in both of these sections would allow both relocation and replacement as described without approval by the Missouri Health Facility Review Committee (MHFRC) or compliance with other provisions of Chapter 197. Currently before SLCR issues a license either for additional beds or a newly licensed facility, DHSS require a Certificate of Need (CON) or a statement from the CON program such as a letter of non-applicability that assures SLCR that SLCR can proceed with licensure and inspection activities. DHSS believes written confirmation, in some type of form, should be provided by the CON program confirming that proposals for relocation, replacement, and bed additions are not subject to MHFRC review and approval or compliance with other provisions of Chapter 197.

Section 197.368 - This Section requires the operator to provide independently audited statements to DHSS. It is unclear whether this reference is to DHSS or the CON program. If it is DHSS, there are several issues:

DHSS will need to develop expertise in review of independently audited statements and be able to address questions from the provider community.

ASSUMPTION (continued)

DHSS will need to fully understand the meanings behind a granted CON and how the committee made its decision and then verify compliance with the CON. The same applies to the parameters pertaining to exemptions whether developed under the \$1 million threshold or the 25% bed increase allowance and the relocation or replacement requirements in Section 197.318.

DHSS will also need to be prepared for the implications if DHSS are unable to verify compliance and are unable to grant a license whether it be denial of an application, potential litigation or dealing with false or misleading reports.

Section 4 allows an operator to request verification of an exemption to DHSS. Currently the CON program does this through letters of non-applicability. This not only provides the operator with verification of exemption but also is SLCR's verification that the CON requirements are met and it is acceptable to proceed with licensing. If the CON program continues to do this and implements this Section as well as the two new provisions in Section 197.318, the impact will be minimal.

Should SLCR have a significant role to play in implementing Section 197.368, it would definitely impact workload. In addition to additional workload on the licensure unit, the plan review unit, and the regions, it would require revision to or creation of new rules and training to SCLR staff on CON requirements.

The fiscal impact to the SLCR is unknown at this time, but is believed to be in excess of \$100,000. The Division will request the additional staff needed in the appropriations process after determining the impact of any increase in the number of licensed facilities and/or increases in activities such as plan review, processing of requests for bed increases, etc.

Oversight assumes, because the DHSS fiscal impact is largely based on speculation, that the DHSS will not incur significant costs related to this proposal. Oversight believes the DHSS fiscal impact would be less than \$100,000. If a significant fiscal impact were to result, the DHSS may request additional funding through the appropriations process.

<u>FISCAL IMPACT - State Government</u>	FY 2008 (10 Mo.)	FY 2009	FY 2010
GENERAL REVENUE FUND			
<u>Revenues - Missouri Health Facilities Review Committee</u>			
Reduction in Application Fees	(\$134,566)	(\$134,566)	(\$134,566)
<u>Costs - Department of Health and Senior Services</u>			
Program Costs	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Less than \$234,566)</u>	<u>(Less than \$234,566)</u>	<u>(Less than \$234,566)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2008 (10 Mo.)	FY 2009	FY 2010
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This legislation raises the long-term care facilities capital expenditures limit for necessitating certificate of need review from 600,000 dollars to one million dollars, eliminates the major medical equipment requirement and the raw number of bed increase requirement for certificate of need review and increases the percent bed increase from 10 percent to 25 percent.

FISCAL DESCRIPTION (continued)

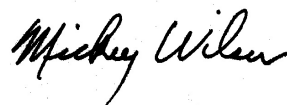
Also, current law provides that any residential care facility or assisted living facility may relocate any portion of such facility's current licensed beds to any other facility to be licensed within the same licensure category under certain specified conditions. Also, certain health care facilities may be replaced in their entirety under specified conditions. This legislation provides that such relocation or replacement shall not require approval under the state certificate of need laws.

This legislation also provides that prior to licensing by the Department of Health and Senior Services of any facility or beds required to obtain a certificate of need on the basis of being a new institutional service or facility, the owner of such facility shall provide an independently audited statement to the Department that such facility complied with the certificate of need granted. In addition, as to facilities exempt from certificate of need review, the owner of such facility shall provide an independently audited statement that such facility was exempt from certificate of need review. If an owner is unable to verify compliance with submission of the audited report, no license shall be granted by the Department. Anyone submitting a false or misleading audit report is guilty of a Class D felony. The owner of any facility or beds exempt from certificate of need review may submit a request to the Department to verify exemption prior to beginning construction. Such decision shall be considered final and subject to appeal but not preclude the owner's responsibility from complying with submission of the audited report.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Attorney General
Department of Insurance, Financial Institutions and Professional Registration
Department of Mental Health
Department of Health and Senior Services
Department of Social Services
Missouri Health Facilities Review Committee
Office of the Secretary of State



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Director
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